

on alcohol or a drug or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. A substance abuse disorder is “active” within the meaning of this part if the person (1) is currently using alcohol and other drugs, except under medical supervision consistent with the restrictions described in § 219.103 of this chapter or (2) has failed to successfully complete primary treatment or successfully participate in aftercare as directed by an EAP Counselor.

Type I Simulator means a replica of the control compartment of a locomotive with all associated control equipment that:

(1) Functions in response to a person’s manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Pictorially, audibly and graphically illustrates the route to be taken;

(3) Graphically, audibly, and physically illustrates the consequences of control manipulations in terms of their effect on train speed, braking capacity, and in-train force levels throughout the train; and

(4) Is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

Type II Simulator means a replica of the control equipment for a locomotive that:

(1) Functions in response to a person’s manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Pictorially, audibly, and graphically illustrates the route to be taken;

(3) Graphically and audibly illustrates the consequences of control manipulations in terms of their effect on train speed, braking capacity, and in-train force levels throughout the train; and

(4) Is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

Type III Simulator means a replica of the control equipment for a locomotive that:

(1) Functions in response to a person’s manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Graphically illustrates the route to be taken;

(3) Graphically illustrates the consequences of control manipulations in terms of their effect on train speed, braking capacity, and in-train force levels throughout the train; and

(4) Is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

[56 FR 28254, June 19, 1991, as amended at 58 FR 19002, Apr. 9, 1993; 60 FR 53136, Oct. 12, 1995; 64 FR 60989, Nov. 8, 1999; 65 FR 58483, Sept. 29, 2000; 67 FR 24, Jan. 2, 2002; 74 FR 68182, Dec. 23, 2009]

§ 240.9 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person’s responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60989, Nov. 8, 1999]

§ 240.11 Penalties and consequences for noncompliance.

(a) A person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$650 and not more than \$25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a

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penalty not to exceed \$100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A to this part for a statement of agency civil penalty policy.

(b) A person who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from all safety-sensitive service in accordance with part 209 of this chapter.

(c) A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

(d) In addition to the enforcement methods referred to in paragraphs (a), (b), and (c) of this section, FRA may also address violations of this part by use of the emergency order, compliance order, and/or injunctive provisions of the Federal Railroad Safety Act.

[56 FR 28254, June 19, 1991, as amended at 63 FR 11624, Mar. 10, 1998; 64 FR 60989, Nov. 8, 1999; 69 FR 30595, May 28, 2004; 72 FR 51198, Sept. 6, 2007; 73 FR 79704, Dec. 30, 2008]

§ 240.13 Information collection requirements.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and are assigned OMB control number 2130–0533.

(b) The information collection requirements are found in the following sections: §§ 240.101, 240.103, 240.105, 240.107, 240.109, 240.111, 240.113, 240.115, 240.117, 240.119, 240.121, 240.123, 240.125, 240.127, 240.129, 240.201, 240.205, 240.207, 240.209, 240.211, 240.213, 240.215, 240.219, 240.221, 240.223, 240.227, 240.229, 240.301, 240.303, 240.305, 240.307, 240.309, 240.401, 240.403, 240.405, 240.407, 240.411.

[56 FR 28254, June 19, 1991, as amended at 58 FR 19003, Apr. 9, 1993]

Subpart B—Component Elements of the Certification Process

§ 240.101 Certification program required.

(a) Each railroad subject to this part shall have in effect a written program

for certifying the qualifications of locomotive engineers.

(b) Each railroad shall have such a program in effect prior to commencing operations.

(c) Each railroad shall have a certification program approved in accordance with § 240.103 that includes:

(1) A procedure for designating any person it determines to be qualified as a supervisor of locomotive engineers that complies with the criteria established in § 240.105;

(2) A designation of the classes of service that it determines will be used in compliance with the criteria established in § 240.107;

(3) A procedure for evaluating prior safety conduct that complies with the criteria established in § 240.109;

(4) A procedure for evaluating visual and hearing acuity that complies with the criteria established in § 240.121;

(5) A procedure for training that complies with the criteria established in § 240.123;

(6) A procedure for knowledge testing that complies with the criteria established in § 240.125;

(7) A procedure for skill performance testing that complies with the criteria established in § 240.127; and

(8) A procedure for monitoring operational performance that complies with the criteria established in § 240.129.

[56 FR 28254, June 19, 1991, as amended at 74 FR 68182, Dec. 23, 2009]

§ 240.103 Approval of design of individual railroad programs by FRA.

(a) Each railroad shall submit its written certification program and a description of how its program conforms to the specific requirements of this part in accordance with the procedures contained in appendix B to this part and shall submit this written certification program for approval at least 60 days before commencing operations.

(b) That submission shall state the railroad's election either:

(1) To accept responsibility for the training of student engineers and thereby obtain authority for that railroad to initially certify a person as an engineer in an appropriate class of service, or